IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

WRIT PETITION NO.5305 OF 2004

The Nasik District Supervision
Co-op. Society Ltd. ...Petitioner.
Vs.
Shri Ashok Daulatrao Rindhe. ...Respondent.

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Mr. Kale i/b. Mr. P.N. Joshi for the Petitioner.
Mr. Uday Warunjikar for the Respondent.

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CORAM : KSHITIJ R. VYAS, C.J. &
DR.D.Y.CHANDRACHUD, J.

March 23, 2006.

P.C. :

Rule. The Learned Counsel waives service on behalf of the Respondent. The petition is finally heard today.

2. The Nashik District Supervision Co-operative Society Ltd., the Petitioner herein, has filed this petition challenging the order dated 30th December 2003 passed by the Divisional Joint Registrar, Co-operative Societies, Nashik Division, Nashik, in Appeal No.A-71 of 2002 preferred by the Respondent.

3. The Respondent at the relevant time was working as a Secretary at Dahigaon, Kasbe, Manvad and Morza. It was alleged

that the Respondent had committed misappropriation of an amount of Rs.40,474/- of the Society. The Respondent was served with a notice and was suspended on the charges of corruption under Bye-law 51(5) of the Petitioner-Society. One Shri V.K. Wagh, Assistant Co-operation Officer, was appointed as an Enquiry Officer to enquire the said charges. The Respondent filed reply on 3rd April 1998 to the said notice before the Enquiry Officer wherein he has pointed out that he deposited the amount as per the notice dated 18th January 1996 issued by the Bank. According to him, the Bank Staff is responsible inasmuch as even though he deposited the amount, his name has not been removed from the enquiry. On 19th March 1998, the Petitioner again issued a notice under Bye-law 17 to the Respondent to show cause as to why action should not be taken under Bye-law 13. The Respondent was asked to file reply within 30 days and was also directed to remain present before the Enquiry Officer and adduce evidence, if any. The Respondent after adducing evidence contended that he was arrested on 25th May 1998. He also contended that he deposited an amount of Rs.63,000/- in the Bank. He also gave his detailed evidence in respect of charges. He has stated that the evidence of Shri B.D. Thakare and Shri Nathuram Bhivsan Patil was also recorded. It

appears that on 18th August 1998 a notice under Bye-law 17(2) was issued to the Respondent whereby he was informed to show cause as to why action under Bye-law 13(h) be not taken against him. The Respondent was granted time to file reply. On 31st August 1998, the Respondent filed reply vide Exh.G to the petition wherein he has contended that he is ready to pay an amount of Rs.26,000/- along with interest at the rate of 24%. He has said that it was not possible for him to immediately deposit the amount and if he is reinstated in service, he will pay it from his salary or he will take loan and repay the said amount. The services of the Respondent were terminated on 26th November 1998 vide Exh.H to the petition, under Bye-law 13(h). It is stated in the order that the Respondent had misappropriated an amount of Rs.40,474/-. It was also found that an amount of Rs.13,000/- was short in the account. The said order was challenged by the Respondent before the Divisional Joint Registrar. It was inter alia contended that the order of termination is illegal and without any substance, hence required to be interfered with since he has been acquitted in Criminal Case No.63 of 1996. On 30th December 2003, vide order at Exh.K, the Divisional Joint Registrar allowed the appeal. The Petitioner has challenged the said order and prayed for quashing and setting

aside the said order.

4. We have heard the Learned Counsel for the parties at length. We have perused the relevant evidence produced. We have also perused the order of acquittal passed by the Learned Judicial Magistrate, First Class, Nandgaon, dated 20th October 2001 in Regular Criminal Case No.63 of 1996.

5. Having seen the order passed by the Divisional Joint Registrar, it is clear that he has allowed the appeal solely on the ground that the Respondent is acquitted in the Criminal Case. He has observed that it cannot be said that the appellant is guilty while working as Secretary of the concerned Societies of the Respondent Society. Therefore, on equitable grounds and in the interest of natural justice, he has found that the appellant has made out a prima facie case for allowing the appeal. Perusal of the judgment of the Criminal Court would show that it was observed by the Learned Magistrate that even after three years from the framing of charge, the prosecution was unable to secure the presence of the Investigating Officer and, therefore, in the absence of the Investigating Officer, the prosecution has failed to prove the case

and, therefore, the accused is entitled to get the benefit of doubt. Thus, the Respondent is acquitted in the criminal case as the I.O. did not enter the witnessbox. In any event, it was not a clean acquittal. The Divisional Joint Registrar unduly gave importance to the order of acquittal recorded by the Learned Magistrate. It is well settled that the acquittal of the appellant in the criminal proceedings is based on the premises that the charges were not proved beyond reasonable doubt. The standard of proof required to prove a charge of misconduct in departmental proceedings is not the same as that requires to prove a criminal charge. The acquittal of the appellant in the criminal case could not be made the basis for setting aside the order for termination of the services of the appellant passed in the disciplinary proceedings on the basis of evidence adduced in the departmental enquiry conducted in the charges levelled against the appellant. (See **Govind Das vs. State of Bihar & Ors.**, (1997) 11 SCC 361).

6. In view of this, in our opinion, the Divisional Joint Registrar has clearly committed an error in allowing the appeal

preferred by the Respondent. The Learned Counsel appearing on behalf of the Respondent submitted that the matter is required to be remanded back to the Appellate Authority on the ground that except the above said point, the Appellate Authority had not decided the other points preferred. He submitted that no proper opportunity of being heard was given when the enquiry was conducted and that the Respondent was not allowed to submit evidence. He invited our attention to the Appeal Memo in which the Respondent had raised grounds vide Exh.I to the petition. Perusing Grounds 7, 8, 9 and 10 to which our attention was invited, in our opinion, these grounds are vague and of general in nature. There is no reason to remand the matter to decide those grounds, in view of the fact that the Respondent has clearly admitted the charges levelled against him in the reply Exh.'G'. We accordingly allow the petition by quashing and setting aside the order dated 30th December 2003 passed by the Divisional Joint Registrar. Rule is made absolute. There shall be no order as to costs.

CHIEF JUSTICE

Dr.D. Y. Chandrachud, J.